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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/652,607	08/30/2000	Margaret Gwyn Latimer	14377.1	3027

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KIMBERLY-CLARK WORLDWIDE, INC.
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EXAMINER

TORRES VELAZQUEZ, NORCA LIZ

ART UNIT PAPER NUMBER

1771

DATE MAILED: 08/10/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/652,607	Applicant(s) LATIMER ET AL.	
	Examiner Norca L. Torres-Velazquez	Art Unit 1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 March 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 13-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 13-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Applicant's arguments filed March 29, 2004 have been fully considered but they are not persuasive.

a. With regards to the Swieringa reference, Applicants argue that the reference fails to teach the high level of fusible fibers claimed in the present application (of at least 40 percent), and certainly not up to 100 percent as asserted by the Examiner citing claim 1, lines 1-2.

It is the Examiner's interpretation that the teaching of a corrugating a web made of at least partially heat softenable fibers Swieringa reference reads on the at least 40 percent of the fibers being fusible since in order to have "at least partially heat softenable fibers", all the fibers of the must be fusible (i.e. up to 100 percent) as asserted by the Examiner in the prior office action.

b. In response to applicant's argument that Swieringa does not teach use of the corrugated material in a personal care product below a liner layer of the personal care product, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). Further, it is noted that the claim incorporates the

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limitation “for use in a personal care product, beneath a liner layer of said personal care product,” in the preamble.

c. Applicants further argue that it is not believed that the reference discloses a corrugated material having a density less than 0.02 g/cc.

It is noted that although the prior art of record does not explicitly teach the claimed density less than 0.02 g/cc it is reasonable to presume that this density is inherent to the corrugating web of the prior art of record. Support for said presumption is found in the use of like materials (i.e. corrugated nonwoven web with fusible fibers). The burden is upon Applicant to prove otherwise. *In re Fitzgerald* 205 USPQ 594. In addition, the presently claimed property of density of less than 0.02 g/cc would obviously have been present once the Swieringa product is provided. Note *In re Best*, 195 USPQ at 433, footnote 4 (CCPA 1977) as to the providing of this rejection made above under 35 USC 102. It is further noted that such low densities are recognized in the art of nonwoven webs used in diapers, for example, MESEK et al. (US 4,044,768; Column 5, lines 1-2).

Therefore, claims 13-29 remain rejected.

Information Disclosure Statement

2. The information disclosure statement filed 08/30/00 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each U.S. and foreign patent; each publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered. It is noted that none of the foreign patents listed in the IDS are in file.

Claim Rejections - 35 USC § 102/103

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 13-15 and 20 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over SWIERINGA (US 4,874,457).

Swieringa is concerned with the creation of a laminate comprising a first layer comprising a corrugated nonwoven web comprising fusible fibers (abstract). Swieringa allows for the web to have up to 100% fusible fibers (claim 1, lines 1-2), as interpreted by the Examiner above. Swieringa's web is unbonded, corrugated to produce folds, and subsequently bonded throughout (fig.1). The web is compacted and bonded such that no gaps are present between folds (col. 2, lines 15-17, col. 6, lines 18-20, and col. 7, lines 44-64). The laminate comprises a nonwoven second layer (figs. 10 and 12). The corrugations can be both uniform and non-uniform in height (figs. 13-16). Swieringa's process involves rotary lapping. It is noted that although the prior art of record does not explicitly teach the claimed density less than 0.02 g/cc it is reasonable to presume that this density is inherent to the corrugating web of the prior art of record. Support for said presumption is found in the use of like materials (i.e. corrugated

nonwoven web with fusible fibers). The burden is upon Applicant to prove otherwise. *In re Fitzgerald* 205 USPQ 594. In addition, the presently claimed property of density of less than 0.02 g/cc would obviously have been present once the Swieringa product is provided. Note *In re Best*, 195 USPQ at 433, footnote 4 (CCPA 1977) as to the providing of this rejection made above under 35 USC 102.

5. Claims 16-19, 21, and 24-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Swieringa (4874457) in view of Huntoon et al (5906879).

Swieringa fails to teach the use of superabsorbent fibers, a method of initially forming the nonwoven web, and applicant's claimed uses. Huntoon is concerned with the creation of a corrugated nonwoven web. As set forth in previous actions, Huntoon teaches the incorporation of superabsorbent fibers into the corrugated web as well as methods for forming the web (cols. 3-4, lines 55-7). It would have been obvious to a person having ordinary skill in the art to utilize superabsorbent fibers and Huntoon's method. Such a combination would have been motivated by the desire to impart absorbent functionality to Swieringa's web. Absorbent properties would expand the commercial uses of Swieringa's web to render it suitable for various lucrative industries such as diapers.

Swieringa is silent with respect to the desired end product usage of its web. Thus, it is necessary to look the prior art for suitable utilities for Swieringa's web. Huntoon teaches applicant's claimed uses (col. 2, lines 6-10). It would have been obvious to a person having ordinary skill in the art to utilize Swieringa's web in Huntoon's uses. The skilled artisan would have been motivated to utilize Swieringa's web in Huntoon's industry by the desire to achieve commercial success with Swieringa's web.

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Swieringa does not teach conjugate fibers. Huntoon teaches the use of conjugate binder fibers (col. 4, lines 9-20). It would have been obvious to a person having ordinary skill in the art to utilize conjugate fibers in the web of Swieringa. Such a modification would have been motivated by the desire to provide uniform bonds while creating a lofty nonwoven web that is soft, but strong and has a high level of resiliency (col. 4, lines 37-39).

With respect to claim 24, Swieringa teaches the corrugated web positioned transversely to other nonwovens (fig. 12). It would have been obvious to align the web in a transverse direction in the final absorbent product. Such a modification would have been motivated by the desire to optimize the absorbent properties of the web by creating channels in the fabric to facilitate the transport of fluids (col. 6, lines 17-21 of Huntoon).

6. Claims 22-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Swieringa (4874457) in view of either Chen et al (5865824), Buck et al (4263363), or Hartwell (3881489).

Swieringa is silent with respect to void volume. Chen, Buck, and Hartwell are all concerned with the creation of creped nonwoven webs having high void volume (col. 3, lines 15-18, col. 5, lines 30-35, and abstract, respectively). The web of Swieringa may inherently have a void volume above 53, because creped webs are inherently high in void volume. However, if not, it would have been obvious to a person having ordinary skill in the art to increase the void volume of Swieringa's web. Such a modification would have been motivated by the desire to improve the fluid handling capabilities of the web. Swieringa teaches the web to be perpendicularly oriented (fig. 12).

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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HOLTMAN (US 4,578,070) – discloses an absorbent product with a first fibrous layer in the form of a nonwoven web and a second layer. The layers are corrugated and stabilized to retain the transverse folds when wet. (Abstract) While the reference teaches the use of fusible fibers, it teaches the use of about 10 to 15% by weight of these fibers. (Col. 6, lines 53-55)

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Norca L. Torres-Velazquez whose telephone number is 571-272-1484. The examiner can normally be reached on Monday-Thursday 8:00-4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

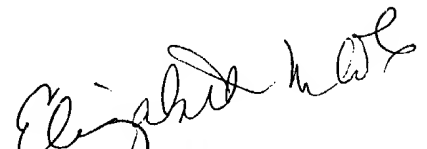
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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Norca L. Torres-Velazquez
Examiner
Art Unit 1771

August 4, 2004


ELIZABETH M. COLE
PRIMARY EXAMINER